

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TYLER S HULBERT,

Plaintiff,

V.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

CASE NO. C11-5625 BHS

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 27) and Plaintiff Tyler S. Hulbert’s (“Hulbert”) objections to the R&R (Dkt. 28).

On September 19, 2012, Judge Strombom issued the R&R recommending that the Court affirm the Administrative Law Judge’s (“ALJ”) denial of benefits because the ALJ did not err in determining that the wages Hulbert received were not earned in bona fide employment. Dkt. 27. On September 28, 2012, Hulbert filed objections. Dkt. 28.

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, the parties dispute whether a determination that wages were not
4 received in bona fide employment constitutes an alteration to Defendant's records of
5 Hulbert's earnings. The Court agrees with Defendant and Judge Strombom's position
6 that a quasi-judicial or judicial determination that wages were not earned in bona fide
7 employment is not an alteration of an earnings record. "If there is a question about
8 whether [an individual is] working as an employee," either defendant or the United States
9 Internal Revenue Service "will make a determination after examining all of the facts of
10 [the individual's] case." 20 C.F.R. §404.1007(d). Clearly, all the facts of an individual's
11 case may be evaluated and the earnings record is in no way conclusive of bona fide
12 employment.

13 Therefore, the Court having considered the R&R, Hulbert's objections, and the
14 remaining record, does hereby find and order as follows:

15 (1) The R&R is **ADOPTED**;
16 (2) The ALJ's decision is **AFFIRMED**; and
17 (3) This action is **DISMISSED**.

18 Dated this 7th day of November, 2012.

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BENJAMIN H. SETTLE
United States District Judge